

REMARKS

Review and reconsideration of the Office Action dated August 2, 2004, is respectfully requested in view of the above amendments and the following remarks.

Claims 1 and 8 have been amended to clarify the invention. The scope of these claims have not been changed. The Examiner is respectfully requested to enter the amendment to Claims 1 and 8.

Applicants note that the examiner states that the arguments presented in Amendment A were considered but not found to be persuasive. However, Applicants note that the argument relating to a "results-effective variable" was not addressed by the Examiner. Applicants request that the Examiner respond to these arguments.

Applicants believe that the claims are novel in view of the cited prior art because the Hornstein and Ashurst references taken alone or in combination fail to teach: 1) the step of introducing a flavor mixture, which has been introduced into a first matrix **into a second matrix** (step c); 2) **comparing** the two headspace analyses (step e); and 3) **changing** (adjusting) the flavor mixture in the second matrix in order **to match** the flavor properties of the first matrix (also step e).

The novelty of the present invention lies in **comparing** the flavor composition of a first and second matrices, adjusting the flavor of the second matrix to match the headspace analysis of a

first matrix containing a flavor mixture having desirable properties.

None of the cited references recognizes the importance of optimizing the match of headspace analysis by adjusting the composition of flavor components in two different matrices. Thus, the in absent of the recognition that the optimization is a result effective variable, a person skilled in the art cannot render this process as obvious by looking at the teaching of the Hornstein and Ashurst references.

By means of the present inventive process, it is possible to apply a flavor profile of a food to another food. The content of each individual flavor compound of an aroma is adapted by using correction factors, so that a completely new flavor formula results which is **tailor-made to the new product**. Surprisingly, using this inventive process, flavor adaptation can be carried out considerably faster and more goal-oriented, than by a purely flavoristic/sensory approach.

In view that none of the references taken alone or in combination teach all the steps of the independent claims, Applicants respectfully request that the Examiner withdraw the rejection.

Furthermore, the Examiner is respectfully requested to contact the undersigned at the indicated telephone number to arrange a telephone interview.

Office Action

Turning to the Office Action, the paragraphing of the Examiner is adopted.

Obviousness

The Examiner rejects Claims 1-8 under 35 U.S.C. §103(a) as being obvious over Hornstein in view of Ashurst for the same reasons as set forth in the last Office Action.

The position of the Examiner can be found on pages 2-3 of the Office Action.

Applicants respectfully traverse for the same reasons as set forth during the response to the previous Office Action and the following remarks.

Compare with Claims 1 and 8, the Hornstein and Ashurst references taken alone or in combination fail to teach: 1) the step of introducing a flavor mixture, which has been introduced into a first matrix, **into second matrix** (step c); 2) **comparing** the two headspace analyses (step e); and 3) **changing** (adjusting) the flavor mixture in the second matrix in order **to match** the flavor properties of the first matrix (also step e).

The novelty of the present invention lies in **comparing** the flavor composition of a second matrix so that the headspace analysis of the second matrix **matches** the headspace analysis of a base matrix containing a flavor mixture having desirable properties.

Applicants note that the examiner cites Hornstein as teaching "combining isolates and fractions" at page 3, line 5 of

the Office Action. However, a close reading of the cited passage of Hornstein (p. 72, line 16) shows that Hornstein teaches combining isolates **only as a means to control for sample degradation during isolation, and not for the purpose of adapting flavor mixtures; and**

Furthermore, Hornstein teaches headspace analysis as a screening method prior to taste panel evaluations (see p.75, third full paragraph). Taste panel evaluations are taught as being superior to headspace analyses (see p.78, first full paragraph). Thus, a person of ordinary skill, upon reading Hornstein, would not have had any technical motivation to modify the Hornstein reference by applying headspace analysis, because taste panel evaluations are provide superior results than the headspace analysis; thus, there is not a reasonable expectation of improvement in doing so.

Furthermore, Applicants note that Hornstein teaches away from the use of headspace analysis for the purpose of adapting flavor mixtures, as in the present claims (page 78, lines 6-10).

In addition, Applicants note that matching of headspace analyses was not recognized in the cited art as being a useful optimization. Unless the cited art recognizes the benefit of optimizing the match of headspace analyses, it cannot render such a process obvious.

With respect to the alleged *prima facie* case of obviousness, the Applicant first asserts that the Examiner has provided no motivation to combine the references beyond a general assertion of obviousness. Applicant respectfully

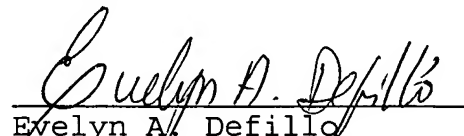
reminds the Examiner that the mere fact that references can be combined does not render the resultant combination obvious. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Regarding Claim 2, the cited references further fail to teach: 1) calculating a correction factor from the peak area percentages of the analyses of the base matrix and the other matrix, 2) calculating the numbers of moles of the individual flavor compounds in the flavor mixture, 3) on the basis of the correction factors determined in step g) adapting the flavor mixture to the other matrix.

Regarding Claim 5, the cited references further fail to teach that the peak area values determined by gas chromatography for the flavor compounds in the headspace over the base matrix and for the flavor compounds in the headspace over the other matrix are used to form a quotient for calculating the correction factors.

Favorable consideration and early issuance of the Notice of Allowance are respectfully requested. The Examiner is respectfully requested to contact the undersigned at the indicated telephone number to arrange a telephone interview.

Respectfully submitted


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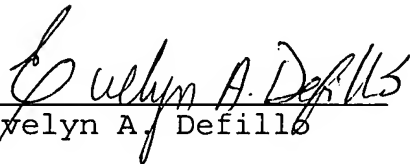
AMENDMENT B AND REQUEST FOR A TELEPHONE INTERVIEW

ATTORNEY DOCKET NO.: 3968.043

CERTIFICATE OF MAILING AND AUTHORIZATION TO CHARGE

I hereby certify that the foregoing AMENEDMENT B AND REQUEST FOR A TELEPHONE INTERVIEW for U.S. Application No. 10/023,178 filed December 17, 2001, was deposited in first class U.S. mail, with sufficient postage, addressed: Attn: Mail Stop: _____, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on **November 2, 2004**.

The Commissioner is hereby authorized to charge any additional fees, which may be required at any time during the prosecution of this application, except for the issue fee, without specific authorization, or credit any overpayment, to Deposit Account No. 16-0877.



Evelyn A. DeFillis